

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20054

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In the Matter of )

Telephone Number Portability )

CC Docket No. 95-116

DA 96-358

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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**PETITION FOR RECONSIDERATION OF  
KMC TELECOM, INC.**

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KMC Telecom, Inc., ("KMC"), by its undersigned counsel and pursuant to Sections 1.101 *et seq.* of the Federal Communications Commission's ("Commission") rules, submits this Petition for Reconsideration ("*Petition*") of the Commission's *Order* in the above captioned proceeding ("*Order*"), released July 2, 1996, in which the Commission adopted rules for the implementation of Number Portability.<sup>1/</sup>

**I. INTRODUCTION AND SUMMARY**

As a new provider of competitive access services throughout the country, KMC strongly supports the Bureau's efforts to require all local exchange carriers ("LECs") to begin the immediate implementation of interim number portability measures, such as Remote Call Forwarding ("RCF") and Direct Inward Dial ("DID"), and to comply with the

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<sup>1/</sup> *Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-116, RM 8535 (rel. July 2, 1996) ("*Number Portability Order*" or "*Further NPRM*").

phased deployment schedule for long-term number portability, as set forth in the Commission's *Order*. However, KMC urges the Commission to reconsider certain aspects of its *Order*. Specifically, KMC requests that the Commission require LECs to accept *bona fide* requests for long-term number portability arrangements from requesting telecommunications service providers in areas outside of the one hundred (100) largest metropolitan statistical areas ("MSAs"), at time frames that are earlier than those specified in the Commission's July 2, 1996 *Order*.

KMC suggests that the Commission should revise its *Order* to require LECs to provide long-term number portability arrangements to carriers in smaller markets (*i.e.* those outside of the 100 largest MSAs), within six months of a *bona fide* request. Requests from carriers in these smaller markets should be able to be *filed* after January 31, 1997, and number portability arrangements should be *implemented* within six months of the date of each *bona fide* request, because at least one method of long-term number portability will be operational by mid-1997.

Alternatively, KMC recommends that the Commission require all LECs *immediately* to accept *bona fide* requests from carriers in smaller MSAs, and to satisfy such requests within twenty-four (24) months, unless the LEC can prove that the provision of number portability arrangements in these areas is technically infeasible under Section 251(b)(2) of the Telecommunications Act of 1996 ("1996 Act").<sup>2/</sup> This proposal of a twenty-four month period is both acceptable and feasible for the provision

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<sup>2/</sup>

Pub. L. 104-104, 100 Stat. 56 (1996) ("1996 Act").

of long-term number portability arrangements by LECs in smaller MSAs, as was demonstrated by the number of commenters in this proceeding that recommended this time frame for the Commission's consideration.

As a final alternative, KMC requests that the Commission require LECs to begin accepting such *bona fide* requests from requesting carriers in areas outside of the 100 largest MSAs *after June 30, 1998*, so as to avoid the unnecessary lag-time that will result under the existing rules. As currently drafted, the Commission's number portability rules do not permit requesting carriers in smaller MSAs to file requests for long-term number portability until January 1, 1999 and do not require LECs to satisfy such requests until "[s]ix months after a specific request by another telecommunications carrier in the areas in which the requesting carrier is operating or plans to operate."<sup>3/</sup>

## II. ANALYSIS

Number portability, as defined by the 1996 Act, is "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."<sup>4/</sup> Congress envisioned that the successful and ubiquitous implementation of number portability will

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<sup>3/</sup> Order at para. 80.

<sup>4/</sup> Section 251(b)(2).

serve to lower barriers to entry and promote competition in the local exchange marketplace.

Section 251 of the 1996 Act directs LECs, both incumbents and new entrants, to offer number portability in accordance with requirements prescribed by the Commission. Carriers must “[p]rovide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the Commission.”<sup>5/</sup> This Congressional directive has been implemented by the Commission through the promulgation of number portability regulations in the *Order* referred to in this *Petition*.

Given the Congressional mandate under the 1996 Act for Commission prescription of number portability requirements, as well as the FCC’s exclusive jurisdiction over number portability implementations that will affect the North American Numbering Plan (“NANP”), the Commission has determined that the adoption of uniform, national rules for the implementation of number portability is essential to ensure the efficient and consistent use of number portability methods and numbering resources on a nationwide basis.<sup>6/</sup> To this end, the Commission has required all LECs to begin the phased deployment of a long-term service provider portability method to all requesting telecommunications carriers in the 100 largest MSAs no later than October 1, 1997, and to complete deployment in those MSAs by December 31, 1998.

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<sup>5/</sup> *Id.*

<sup>6/</sup> *Order* at para. 37.

The time frame for the deployment of long-term number portability set forth in the Commission's *Order*, however, is deficient and warrants revision. Specifically, the *Order* fails to permit carriers in smaller MSAs to submit *bona fide* requests for number portability arrangements until January 1, 1999, and provides LECs with a six month period in which to satisfy such requests. This time frame unnecessarily delays the implementation of number portability in areas outside of the 100 largest MSAs, thereby retarding the progress of legitimate competition in local exchange markets in these areas.

LECs should be required to accept *bona fide* requests for long-term number portability arrangements from requesting telecommunications service providers in areas outside of the 100 largest MSAs, at time frames that are earlier than those specified in the Commission's July 2, 1996 *Order*. The Commission should ensure that viable competition reaches smaller markets by adopting KMC's proposals, as set forth below.

**A. LECs MUST PROVIDE LONG TERM NUMBER PORTABILITY TO REQUESTING TELECOMMUNICATIONS CARRIERS IN AREAS OUTSIDE OF THE 100 LARGEST MSAS WITHIN SIX MONTHS OF RECEIPT OF A BONA FIDE REQUEST SUBMITTED AFTER JANUARY 31, 1997**

As clearly expressed by the Commission in its *Order*, the provision of number portability is essential to promote competition between telecommunications users by enabling customers to switch service providers without changing their telephone numbers.<sup>21</sup> The Commission has noted that the resulting competition will foster lower

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<sup>21</sup> *Order* at para. 30.

local telephone prices, thereby stimulating demand for telecommunications services and increasing economic growth.<sup>9/</sup> In its *Order*, the Commission acknowledged that, because of the value placed by customers on retention of their phone numbers, a lack of number portability would be likely to deter the entry of competitors into the local exchange market and to frustrate the pro-competitive goals of the 1996 Act.<sup>9/</sup> As well, number portability creates new and efficient interconnection arrangements, which will lead to lower prices and more choices for end user customers.

The record has established, and the Commission clearly has acknowledged that, in markets *outside of* the 100 largest MSAs, “[l]ong-term number portability should be deployed within six months of a specific request from another telecommunications service provider.”<sup>10/</sup> Therefore, the Commission should revise its *Order* to require LECs to provide long-term number portability arrangements to carriers in smaller markets (*i.e.* those outside of the 100 largest MSAs), within six months of a *bona fide* request. It is possible to permit requests from carriers in these smaller markets to be ***filed after January 31, 1997***, and to require database number portability arrangements to be *implemented* within six months of each request, because the Commission has determined that at least one-method of long-term number portability will be operational by mid-1997.<sup>11/</sup>

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<sup>9/</sup> *Id.*

<sup>9/</sup> *Order* at para. 31.

<sup>10/</sup> *Order* at para. 82.

<sup>11/</sup> *Order* at para. 81.



If at least one method of long-term number portability is operational by mid-1997, it is reasonable to expect that small market carriers that have submitted *bona fide* requests for technically feasible number portability arrangements after January 31, 1997, should have such requests satisfied within six months. Under this proposal, LECs would have *at least* until August 1, 1997 to satisfy a requesting carrier in a small MSA (assuming a request for long-term number portability was made on February 1, 1997). Because the earliest possible date required to implement long-term number portability in an MSA outside of the top 100 MSAs will be August 1, 1997--a date clearly after the "mid-1997" time frame stated by the Commission--this approach is reasonable and should be adopted by the Commission.

While the Commission chose its fifteen (15)-month phased deployment approach for long-term number portability in order to "[ease] the burden on carriers serving multiple regions by limiting the number of MSAs in which implementation is required during a particular calendar quarter,"<sup>12/</sup> the Commission clearly could not have meant to foreclose competition in those areas outside of the largest MSAs where meaningful competition exists. KMC provides "meaningful competition," in the form of competitive access service offerings to end user customers throughout multiple service territories. As a result, KMC should be entitled to submit a *bona fide* request for a technically feasible long-term number portability arrangement, which should be satisfied within six months of the request, despite the fact that KMC does not operate in a market within

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<sup>12/</sup>

Order at para. 81.

the top 100 MSAs.

This six month time frame is reasonable because, as stated above, the Commission already has declared, in its *Order*, that long-term number portability should be deployed within six months of a specific request from another telecommunications service provider, in areas outside the largest 100 MSAs, and because the record in this proceeding has established that at least one method of long-term number portability will be technically feasible by mid-1997. As well, simply because a carrier operates outside of the nation's largest markets does not mean that its need for access to number portability arrangements is any less urgent or necessary than a carrier providing service in New York City or Washington, D.C. This is true especially for markets in which new entrants seek to create a competitive environment for the provision of local exchange services. The creation of viable local competition will *not* exist if access to number portability continues to be limited.

Just as the advent of equal access accelerated competition in the long distance market, so too the implementation of long-term number portability is critical to ensuring that local competition becomes a reality without undue delay. Indeed, Congress was quite clear in its determination that "the ability to change service providers is only meaningful if a customer can retain his or her own phone number."<sup>13/</sup> Number portability is an integral network function which allows a customer to have a choice of local service providers, but such choice can occur only where the implementation of

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<sup>13/</sup> House of Rep. Comm. on Commerce Report on H.R. 1555 at 72 (July 24, 1995) ("*House Report*").

number portability is mandated by the Commission (as the Commission has done in this *Order*), **and** where LECs are forced to provide such arrangements to requesting carriers, *within a reasonable period of time*, regardless of the size of the individual market.

It has been noted that the demand for number portability may be slower to develop in rural areas, and that the expense associated with the provision of database number portability arrangements may be unnecessary for LECs to incur, where competition does not exist.<sup>14/</sup> However, once it appears obvious that a competitor in a given market *is* serious about providing competitive service in *any* market, small or large--a fact that will be evident largely upon the submission of a *bona fide* request that satisfies the criteria set forth in the *Order*<sup>15/</sup>--the LEC should be required to provide a number portability arrangement within six months of receiving a request submitted after January 31, 1997.

Therefore, the Commission should revise its *Order* to permit KMC and other requesting telecommunications carriers outside of the largest 100 MSAs to submit requests for number portability arrangements after January 31, 1997, so as to level the

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<sup>14/</sup> See *Comments of MFS Communications Company, Inc.* at 9 (filed Sept. 12, 1995) ("Installation of number portability systems in markets beyond the top 100 should be required only if and when *bona fide* local competition exists in those markets").

<sup>15/</sup> The *Order* requires requesting carriers in smaller MSAs to file applications for number portability that: "[s]pecifically request long-term number portability, identify the discrete geographic area covered by the request, and provide a tentative date six or more months in the future when the carrier expects to need number portability in order to port prospective customers." *Order* at para. 80.

playing field for local telecommunications services by the third quarter of 1997.

**B. ALTERNATIVELY, LECs MUST PROVIDE LONG TERM NUMBER PORTABILITY TO TELECOMMUNICATIONS CARRIERS LOCATED IN AREAS OUTSIDE OF THE 100 LARGEST MSAS WITHIN TWENTY-FOUR MONTHS OF RECEIPT OF A BONA FIDE REQUEST**

If the Commission decides against the implementation of KMC's proposal, *which KMC reiterates is both feasible and reasonable*, as an alternative, the Commission should adopt the proposal espoused by a number of commenters throughout this proceeding, namely, that LECs *immediately* should be required to accept *bona fide* requests from carriers in smaller MSAs, and to satisfy such requests within 24 months, unless the LEC can prove that the provision of number portability arrangements in these areas is technically infeasible.

Throughout this proceeding, many commenters have found a 24 month period to be both acceptable and feasible for the provision of long-term number portability arrangements by LECs in smaller MSAs.<sup>18/</sup> Some commenters have advocated an

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<sup>18/</sup> *Comments of TDS Telecom* at 12 (filed Sept. 12, 1995) (stating that "[t]he Commission should require that, in response to a *bona fide* request by an eligible carrier, the incumbent carrier shall make number portability available in smaller markets within twenty four months"); *Comments of the Ad Hoc Coalition of Competitive Carriers* at 15 (filed Sept. 12, 1995) (asserting that "[i]n the rest of the country [i.e. outside of the 100 top MSAs], carriers should be permitted to make written requests for number portability with implementation required within 24 months of a request."); *Comments of the Association for Local Telecommunications Services* at 10 (filed Sept. 12, 1995) (agreeing with the Ad Hoc Number Portability Coalition that "[f]ull number portability can be implemented in major markets and upon bona fide request within twenty-four months [which is] a reasonable estimate"); *Reply Comments of Teleport Communications Group, Inc.* at 10 (filed Oct. 12, 1995) (advising the

even shorter period of time, declaring that the deployment of database-supported number portability solutions should be required within eighteen (18) months of a *bona fide* request for portability in smaller MSAs, <sup>17/</sup> or that carriers outside of the top 100 markets should offer number portability as early as October 1997, but no later than October 1998, and “[w]ithin a reasonable period of time after [being] requested to do so by a facilities-based carrier in the same market area.”<sup>18/</sup>

If history is any indicator, LECs inevitably will drag their feet in providing long-term number portability arrangements to carriers in smaller MSAs, since the Commission’s rules require only that the LECs act “within six months” of a *bona fide* request, and do not command any action on the part of the LECs before January 1, 1999, nor any implementation of long-term number portability arrangements in smaller MSAs until July 1, 1999. LECs are certain to claim that these requests are neither *bona fide* nor technically feasible. Because the *Order* clearly lists the information that a carrier must include in its request, and requires that LECs *must* make long term number portability available in smaller MSAs within six months of receiving a legitimate request, the Commission’s rules leave little room for LECs to manipulate these

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Commission “[t]hat, in response to a *bona fide* request by an eligible carrier, the incumbent carrier shall make number portability available in smaller markets within 24 months”).

<sup>17/</sup> *Comments of Citizens Utilities Companies* at 8 (filed Sept. 12, 1995).

<sup>18/</sup> *Reply Comments of Omnipoint Corporation* at 9 (filed Oct. 12, 1995).

situations. Nevertheless, the time frame established by the Commission for the provision of long term number portability arrangements in smaller MSAs is inadequate.

While either the 24 month or the 18 month period proposed by commenters throughout this proceeding and recommended by KMC in this *Petition* would satisfy the Congressional mandate of Section 251(b)(2) of the 1996 Act, it is essential that the Commission create stronger disincentives against undue delay by the LECs, and ensure that the speedy implementation of number portability becomes a reality. The Commission will achieve this goal by setting a time frame that is more reasonable than the mid-1999 time frame currently required by the Commission's *Order*.

**C. ALTERNATIVELY, LECs MUST ACCEPT BONA FIDE REQUESTS FROM TELECOMMUNICATIONS CARRIERS OUTSIDE OF THE 100 LARGEST MSAs, BEGINNING JUNE 30, 1998**

As a final alternative, KMC requests that the Commission require LECs to begin **accepting** *bona fide* requests from requesting carriers in areas outside of the 100 largest MSAs *after June 30, 1998*, so as to avoid the unnecessary lag-time that results under the existing rules. As currently drafted, the Commission's number portability rules do not permit requesting carriers in smaller MSAs to file requests for long-term number portability until January 1, 1999 and do not require LECs to satisfy such requests until "[s]ix months after a specific request by another telecommunications carrier in the areas in which the requesting carrier is operating or plans to operate."<sup>19/</sup>

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<sup>19/</sup> *Order* at para. 80.

This time frame allows LECs to complete their phased deployment of long-term number portability arrangements in the largest 100 markets by December 31, 1998, without having to implement similar arrangements for carriers located in smaller markets until July 1, 1999 *at the earliest*. This six month delay clearly is unnecessary and serves merely to prohibit carriers in smaller MSAs from providing the same services to their customers as carriers in the 100 largest MSAs, until the LECs have completed their entire deployment of long-term number portability in the largest markets.

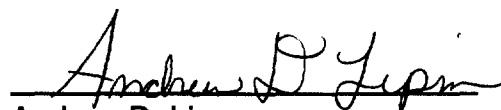
KMC respectfully suggests that there is no need for such a delay, and that the Commission should revise the earliest date upon which carriers outside of the largest 100 MSAs can request long-term number portability arrangements. The Commission should amend the date upon which carriers in smaller markets can submit requests for long-term number portability, from December 31, 1998 to June 1, 1998, in order to encourage the continuous deployment of long-term number portability in *all* markets in which requesting carriers seek to provide viable competition.

### **III. CONCLUSION**

The Telecommunications Act plainly requires that number portability be provided to *all* telecommunications carriers, in order to create truly competitive local exchange markets. In this *Petition for Reconsideration*, KMC Telecom, Inc. urges the Commission to reconsider certain aspects of its *Order*, namely the time frame that the Commission has established for the submission and the implementation of requests by carriers in small markets for long-term number portability arrangements. Specifically, KMC requests that

the Commission require LECs to accept *bona fide* requests for long-term number portability arrangements from requesting telecommunications service providers in areas outside of the one hundred (100) largest metropolitan statistical areas ("MSAs"), at an earlier period than is specified in the Commission's July 2, 1996 *Order*, in order to provide carriers in smaller markets with similar opportunities as those currently available to carriers in the top 100 MSAs.

Respectfully Submitted,



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